

ASSEMBLY BILL

No. 731

Introduced by Assembly Member Wayne

February 22, 2001

An act to add Part 5 (commencing with Section 6400) to Division 10 of, and to repeal Section 6380.5 of, the Family Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 731, as introduced, Wayne. Domestic violence.

Existing law provides for the issuance and enforcement of protective orders in cases involving domestic violence. Existing law provides that a protective or restraining order related to domestic or family violence and issued by a court of another state, a tribe, or a military tribunal shall be deemed valid if the issuing court had jurisdiction over the parties and the matter.

This bill would delete the latter provision and would enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which would authorize the enforcement of a valid foreign protection order in a tribunal of this state under certain conditions. It would prescribe the criteria for a determination of validity and would specify that registration or filing of an order in this state is not required for the enforcement of a valid order. It also would require a law enforcement officer of this state to enforce a foreign support order upon determining that there is probable cause to believe that a valid foreign protection order exists and has been violated. The bill would also authorize any individual to register a foreign protection order and would require the Department of Justice to register the order in accordance with the provisions of the bill.

By imposing new duties on local law enforcement officers, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6380.5 of the Family Code is repealed.
- 2 ~~6380.5. (a) A protective or restraining order related to~~
- 3 ~~domestic or family violence issued by a court of another state, as~~
- 4 ~~defined in Section 145, a tribe, or a military tribunal, shall be~~
- 5 ~~deemed valid if the issuing court had jurisdiction over the parties~~
- 6 ~~and matter under the law of the state or tribe, or under the law~~
- 7 ~~applicable to the military tribunal. There shall be a presumption of~~
- 8 ~~validity where an order appears authentic on its face.~~
- 9 ~~(b) Any valid protective or restraining order related to~~
- 10 ~~domestic or family violence issued by a court of another state, as~~
- 11 ~~defined in Section 145, a tribe, or a military tribunal, shall, upon~~
- 12 ~~request of the person in possession of the foreign protective order,~~
- 13 ~~be registered with a court of this state in order to be entered in the~~
- 14 ~~Domestic Violence Restraining Order System established under~~
- 15 ~~this chapter. The Judicial Council shall adopt rules of court to do~~
- 16 ~~the following:~~
- 17 ~~(1) Set forth the process whereby a person in possession of a~~
- 18 ~~valid foreign protective or restraining order may voluntarily~~
- 19 ~~register the order with a court of this state for entry into the~~
- 20 ~~Domestic Violence Restraining Order System.~~
- 21 ~~(2) Require the sealing of foreign protective orders and provide~~
- 22 ~~access only to law enforcement, the person who registered the~~



1 ~~order upon written request with proof of identification, the defense~~
2 ~~after arraignment on criminal charges involving an alleged~~
3 ~~violation of the order, or upon further order of the court.~~

4 ~~(e) Any valid protective or restraining order related to domestic~~
5 ~~or family violence issued by a court of another state, as defined in~~
6 ~~Section 145, a tribe, or a military tribunal, shall be accorded full~~
7 ~~faith and credit by the courts of this state, and the terms, as written,~~
8 ~~shall be enforced as set forth in Section 6381, as if it had been~~
9 ~~issued in this state.~~

10 SEC. 2. Part 5 (commencing with Section 6400) is added to
11 Division 10 of the Family Code, to read:

12
13 PART 5. UNIFORM INTERSTATE ENFORCEMENT OF
14 DOMESTIC VIOLENCE PROTECTION ORDERS ACT
15

16 6400. This part may be cited as the Uniform Interstate
17 Enforcement of Domestic Violence Protection Orders Act.

18 6401. In this part:

19 (1) "Foreign protection order" means a protection order issued
20 by a tribunal of another state.

21 (2) "Issuing state" means the state whose tribunal issues a
22 protection order.

23 (3) "Mutual foreign protection order" means a foreign
24 protection order that includes provisions in favor of both the
25 protected individual seeking enforcement of the order and the
26 respondent.

27 (4) "Protected individual" means an individual protected by a
28 protection order.

29 (5) "Protection order" means an injunction or other order,
30 issued by a tribunal under the domestic violence or family violence
31 laws of the issuing state, to prevent an individual from engaging
32 in violent or threatening acts against, harassment of, contact or
33 communication with, or physical proximity to, another individual.

34 (6) "Respondent" means the individual against whom
35 enforcement of a protection order is sought.

36 (7) "State" means a state of the United States, the District of
37 Columbia, Puerto Rico, the United States Virgin Islands, or any
38 territory or insular possession subject to the jurisdiction of the
39 United States. The term includes an Indian tribe or band that has
40 jurisdiction to issue protection orders.

(8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

6402. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A tribunal of this state may not enforce a provision of a foreign protection order with respect to support under this part.

(e) A foreign protection order is valid if it meets all of the following criteria:

(1) Identifies the protected individual and the respondent.

(2) Is currently in effect.

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state.

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(f) A foreign protection order valid on its face is prima facie evidence of its validity.

1 (g) Absence of any of the criteria for validity of a foreign
2 protection order is an affirmative defense in an action seeking
3 enforcement of the order.

4 (h) A tribunal of this state may enforce provisions of a mutual
5 foreign protection order which favor a respondent only if both of
6 the following are true:

7 (1) The respondent filed a written pleading seeking a protection
8 order from the tribunal of the issuing state.

9 (2) The tribunal of the issuing state made specific findings in
10 favor of the respondent.

11 6403. (a) A law enforcement officer of this state, upon
12 determining that there is probable cause to believe that a valid
13 foreign protection order exists and that the order has been violated,
14 shall enforce the order as if it were the order of a tribunal of this
15 state. Presentation of a protection order that identifies both the
16 protected individual and the respondent and, on its face, is
17 currently in effect constitutes probable cause to believe that a valid
18 foreign protection order exists. For the purposes of this section, the
19 protection order may be inscribed on a tangible medium or may
20 have been stored in an electronic or other medium if it is
21 retrievable in perceivable form. Presentation of a certified copy of
22 a protection order is not required for enforcement.

23 (b) If a foreign protection order is not presented, a law
24 enforcement officer of this state may consider other information
25 in determining whether there is probable cause to believe that a
26 valid foreign protection order exists.

27 (c) If a law enforcement officer of this state determines that an
28 otherwise valid foreign protection order cannot be enforced
29 because the respondent has not been notified or served with the
30 order, the officer shall inform the respondent of the order, make a
31 reasonable effort to serve the order upon the respondent, and allow
32 the respondent a reasonable opportunity to comply with the order
33 before enforcing the order.

34 (d) Registration or filing of an order in this state is not required
35 for the enforcement of a valid foreign protection order pursuant to
36 this part.

37 6404. (a) Any individual may register a foreign protection
38 order in this state. To register a foreign protection order, an
39 individual shall present a certified copy of the order to the
40 Department of Justice for registration.

1 (b) Upon receipt of a foreign protection order, the Department
2 of Justice shall register the order in accordance with this section.
3 After the order is registered, the responsible agency shall furnish
4 to the individual registering the order a certified copy of the
5 registered order.

6 (c) The Department of Justice shall register an order upon
7 presentation of a copy of a protection order that has been certified
8 by the issuing state. A registered foreign protection order that is
9 inaccurate or is not currently in effect shall be corrected or
10 removed from the registry in accordance with the law of this state.

11 (d) An individual registering a foreign protection order shall
12 file an affidavit by the protected individual stating that, to the best
13 of the protected individual's knowledge, the order is currently in
14 effect.

15 (e) A foreign protection order registered under this part may be
16 entered in any existing state or federal registry of protection
17 orders, in accordance with applicable law.

18 (f) A fee may not be charged for the registration of a foreign
19 protection order.

20 6405. This state or a local governmental agency, or a law
21 enforcement officer, prosecuting attorney, clerk of court, or any
22 state or local governmental official acting in an official capacity,
23 is immune from civil and criminal liability for an act or omission
24 arising out of the registration or enforcement of a foreign
25 protection order or the detention or arrest of an alleged violator of
26 a foreign protection order if the act or omission was done in good
27 faith in an effort to comply with this part.

28 6406. A protected individual who pursues remedies under this
29 part is not precluded from pursuing other legal or equitable
30 remedies against the respondent.

31 6407. In applying and construing this part, consideration shall
32 be given to the need to promote uniformity of the law with respect
33 to its subject matter among states that also have adopted the act
34 cited in Section 6400.

35 6408. If any provision of this part or its application to any
36 person or circumstance is held invalid, the invalidity does not
37 affect other provisions or applications of this part which can be
38 given effect without the invalid provision or application, and to
39 this end the provisions of this part are severable.



1 6409. This part applies to protection orders issued before
2 January 1, 2002, and to continuing actions for enforcement of
3 foreign protection orders commenced before January 1, 2002. A
4 request for enforcement of a foreign protection order made on or
5 after January 1, 2002, for violations of a foreign protection order
6 occurring before January 1, 2002, is governed by this part.

7 SEC. 3. Notwithstanding Section 17610 of the Government
8 Code, if the Commission on State Mandates determines that this
9 act contains costs mandated by the state, reimbursement to local
10 agencies and school districts for those costs shall be made pursuant
11 to Part 7 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the claim for
13 reimbursement does not exceed one million dollars (\$1,000,000),
14 reimbursement shall be made from the State Mandates Claims
15 Fund.

